



## **ADVISORY OPINION 07-07**

Interpretation of T.C.A. §§ 3-6-304 and 3-6-305  
with respect to an association's provision of various  
benefits, goods and services to its members who are  
state officials when such association is an employer  
of a lobbyist.

### **INTRODUCTION**

The following Advisory Opinion is in response to a written inquiry from Ms. Candi Rawlins on behalf of the Tennessee Recreational Parks Association ("TRPA") as to whether certain conduct is permitted under the Comprehensive Governmental Ethics Reform Act of 2006 (the "Act").

Ms. Rawlins asks the following questions:

- (1) Is the TRPA permitted to pay its President's and President-Elect's travel and lodging expenses to its national conferences and regional meetings if the President and President-Elect are also state officials?
- (2) Is the TRPA permitted to provide a working lunch to members of its Executive Committee if such members are also state officials?
- (3) Is the TRPA permitted to provide a meal ticket or a registration fee as a token of appreciation to members of its event host committee if such members are also state officials?
- (4) Is the TRPA permitted to offer state agency membership packages that include membership benefits and discounts for the state employees working in the agency?
- (5) Is the TRPA permitted to co-sponsor an educational training event in conjunction with a state agency? Specifically, is the TRPA permitted to share in the costs of the meals and materials being provided to the attendees, as well as share in the cost of the rental of meeting space?
- (6) Is the TRPA permitted to provide food and refreshments to TRPA members who are also state officials at an event which is hosted by TRPA but is sponsored by an employer of a lobbyist other than TRPA?
- (7) Is the TRPA permitted to rent meeting space from state or local governments? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis moves to adopt the states ethics laws?

In response to the above questions, the Tennessee Ethics Commission ("Commission") concludes:

- (1) TRPA is a professional organization for government officials, and thus membership therein is not distinguishable from the member's status as a government employee. Accordingly, those members of the

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TRPA who are state officials may not solicit gifts or contributions from lobbyists or employers of lobbyists, and may not choose the businesses that TRPA will solicit.

(2) State employee members of the executive committee may participate in the working lunch as long as the value of the meal is less than \$50.00 and the meal otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).

(3) TRPA is permitted to provide meals and beverages to state officials who serve on the event host committee as long as the value of the meals and beverages does not exceed \$50.00 per person, per day and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).

(4) TRPA may provide membership packages and discounts to state agencies as long as the benefits of such packages are not enhanced due to the status of the employees as state officials.

(5) TRPA may co-sponsor an event with a state agency as long TRPA's sponsorship purchases from the agency goods or services at fair market value.

(6) TRPA may provide members food and refreshments to an event sponsored by an employer of a lobbyist other than TRPA as long as the value of such meal and beverage does not exceed \$50.00 per person, per day and otherwise complies with the requirements of T.C.A. § 3-6-305(b)(10).

(7) TRPA is permitted under the Act to rent space, equipment, and other goods and services, from state government agencies as long as TRPA pays the fair market value of the goods or services to the agency. The analysis will not change if the city of Memphis votes to place itself under the Act.

### **BACKGROUND**

Ms. Rawlins is the Executive Director and a lobbyist for the TRPA. She states that its membership includes public employees who work in parks and recreation at the city, county, state and federal levels, and private citizens who have an interest in parks and recreation. In the past, the TRPA has provided financial assistance to its President and President-Elect to travel to its national conferences and regional meetings. The TRPA's administrative budget allows it to pay for lunch when its Executive Committee holds a meeting. Furthermore, persons who serve on the host committee for a conference in Tennessee are provided a meal ticket, in exchange for their assistance with the program. Additionally, in an effort to increase membership, the TRPA offers membership packages and discounts to prospective members. Lastly, the TRPA occasionally co-sponsors an event with another state agency and will rent meeting space from local or state governmental entities, or TRPA will host an event which is sponsored by an employer of a lobbyist

### **DISCUSSION**

#### **A. PAYMENT OF STATE OFFICIAL MEMBERS' TRAVEL AND LODGING EXPENSES**

Is the TRPA permitted to pay its President's and President-Elect's travel and lodging expenses to its national conferences and regional meetings if the President and President-Elect are also state officials?

State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending on the organization or association. An

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organization such as the TRPA, however, is primarily comprised of government employees and most of its state employee members receive their membership through their state agency or as a direct result of their employment with the agency. Accordingly, it is difficult, if not impossible, for the state official, acting on behalf of TRPA, to be seen as performing a role separate from his or her status as a state employee. The restrictions in the Act relative to state officials and employers of lobbyists therefore apply to TRPA and its state employee members.

Regarding lodging expenses, T.C.A. § 3-6-304(h) provides:

Except to the extent permissible under T.C.A. § 3-6-305, no employer of a lobbyist, lobbyist or any person acting at the direction of an employer of a lobbyist shall pay the lodging expenses of an official in the legislative or executive branch or immediate family of the official.

T.C.A. § 3-6-305(b)(7)(B) provides an exception to the ban on lodging expenses for attendance at conferences sponsored by an established and recognized organization of elected or appointed state government officials. TRPA is not exclusively comprised of state-level officials, and thus this exception does not apply.

Another exception to this ban is contained in T.C.A. § 3-6-305(b)(1), which exempts, “Benefits resulting from business, employment, or other outside activities of a candidate or official or the immediate family of a candidate or official, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the candidate or official.”

TRPA is an established and recognized membership organization primarily for government employees, and most members receive their membership by virtue of their government employment. Accordingly, a state official’s membership in TRPA cannot be construed as an “outside activity.” Thus, the exception does not apply and the ban contained in T.C.A. § 3-6-304(h) prohibits TRPA, as an employer of a lobbyist, from paying all or any part of the lodging expenses of any officer who is also a state official.

Regarding the payment of the officers’ travel expenses, T.C.A. § 3-6-305(b)(11) contains an exception for “occasional or incidental *local* travel.” Travel to national conferences and regional meetings does not constitute local travel, and thus this exception does not apply. Accordingly, TRPA is prohibited from paying the travel expenses of its officers who are also state officials.

#### **B. PURCHASING LUNCH FOR EXECUTIVE COMMITTEE MEMBERS, WHICH MAY INCLUDE STATE OFFICIALS**

Is the TRPA permitted to provide a working lunch to members of its Executive Committee if such members are also state officials?

T.C.A. § 3-6-305(b)(10)(A) contains an exception to the gift ban for meals associated with an in-state event, as follows:

(b) (10)(A) Food, refreshments, meals, or beverages that are provided by an employer of a lobbyist in connection with an in-state event to which invitations are extended to an official or officials in the legislative branch or official or officials in the executive branch; provided, that:

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(i) No employer of a lobbyist may provide food, refreshments, meals, or beverages, the value of which to the official exceeds fifty dollars (\$50.00) per event per day, excluding sales tax and gratuity; nor may such employer of a lobbyist provide any such items to any official pursuant to this subdivision (b)(10)(A)(i) that have a cumulative value of more than one hundred dollars (\$100) to the official during a calendar year;

(ii) The value of any such gift may not be reduced below such monetary limitations by dividing the cost of the gift among two (2) or more employers of lobbyists;

(iii) This exception to the prohibition in subsection (a) only applies to a member or members of the general assembly, if the member or members do not receive a per diem allowance pursuant to § 3-1-106, for the day on which the event is held and the member or members do not receive any food, refreshments, meals or beverages that are provided in connection with the in-state event that are not offered or provided to other nonmembers in attendance at the event; and

(iv) An officer or management-level employee of each employer of a lobbyist paying for the event shall attend the event; however, a lobbyist shall not be considered to be an officer or management-level employee of an employer of the lobbyist paying for the event for purposes of this subdivision (b)(10)(A)(iv).

Accordingly, under T.C.A. § 3-6-305(b)(10)(A), state employee members of TRPA's Executive Committee may participate in the working lunch as long as the value of any food, refreshments, or beverages that are provided by TRPA does not exceed \$50.00 per person, per day, and the other statutory requirements listed above are followed.

#### **C. MEAL TICKETS AND REGISTRATION FEES FOR STATE OFFICIALS WHO VOLUNTEER AT CONFERENCES**

Is the TRPA permitted to provide a meal ticket or a registration fee as a token of appreciation to members of its event host committee if such members are also state officials?

T.C.A. § 3-6-301(11) specifically exempts from the definition of "gift" the waiver of a registration fee to a conference or educational seminar. Accordingly, TRPA may waive the registration fee for volunteers who are state officials.

State officials may accept a meal ticket as long as it complies with the "in-state event" exception contained in T.C.A. § 3-6-305(b)(10), as discussed in Section B, above.

#### **D. MEMBERSHIP PACKAGES AND DISCOUNTS FOR STATE AGENCIES**

Is the TRPA permitted to offer state agency membership packages that include membership benefits and discounts for the state employees working in the agency?

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From the information provided to the Commission, a membership package provides opportunities and benefits for the state employees working in the agency, such as monthly magazines, access to employment vacancies, notice of educational workshops and access to a membership listserv.

T.C.A. §3-6-305(b)(6) provides an exception to the gift ban:

Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

(A) Discounts afforded to the general public or specified groups or occupations under normal business conditions, except that such discounts may not be based upon on the status of the candidate or official;

The exception contained in this statutory section permits TRPA to provide membership packages and discounts to state agencies as long as the benefits of such packages are not enhanced due to the status of the employees as state officials.

**E. CO-SPONSORING TRAINING EVENTS WITH STATE AGENCIES**

Is the TRPA permitted to co-sponsor an educational training event in conjunction with a state agency? Specifically, is the TRPA permitted to share in the costs of the meals and materials being provided to the attendees, as well as share in the cost of the rental of meeting space?

TRPA states that it pays \$500.00 for a sponsorship. In exchange for the sponsorship, the TRPA advertises through an agency tabletop display, facilitates the roundtable discussions at the training event, and receives food and beverages.

Through its sponsorship, the TRPA purchases the right to advertise to the event attendees and to participate in the event. When the TRPA purchases goods or services from a state agency for fair market value, TRPA is not providing a “gift” under T.C.A. § 3-6-301(11) and the gift restrictions of T.C.A. § 3-6-305 do not apply. Accordingly, the TRPA may sponsor state agency educational events as long as such sponsorship represents the fair market value of sponsorship of similar conferences and educational workshops.

**F. PROVIDING FOOD AND REFRESHMENTS TO STATE OFFICIAL MEMBERS AT EVENTS SPONSORED BY AN EMPLOYER OF A LOBBYIST OTHER THAN TRPA**

Is the TRPA permitted to provide food and refreshments to TRPA members who are also state officials at an event which is hosted by TRPA but is sponsored by an employer of a lobbyist other than TRPA?

An employer of a lobbyist, other than TRPA, may provide food, beverages and refreshments to TRPA registered delegates, members and volunteers who may be state officials if provided in accordance with the “in-state event” exception contained in T.C.A. § 3-6-305(b)(10)(A)(i), as discussed in Section B, above.

**G. RENTING MEETING SPACE FROM A STATE OR LOCAL GOVERNMENT ENTITY**

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Is TRPA permitted to rent meeting space from state or local agencies? Will the answer remain the same if TRPA leases space in state parks while lobbying the state on issues relating to parks, recreation, and the environment? Will the answer remain the same if the city of Memphis moves to adopt the state ethics law?

T.C.A. § 3-6-301(11) exempts from the definition of “gift” items or services for which consideration of equal or greater value is received. Accordingly, TRPA may rent meeting space, a/v equipment, etc. from the state, including those state agencies that TRPA directly lobbies, as long as TRPA pays fair market value for the items and services.

The Commission does not have jurisdiction over TRPA’s activities as they relate to local government officials. However, if the city of Memphis votes to place itself under the state Ethics Reform Act of 2006 and the jurisdiction of the Commission, TRPA will continue to be allowed to rent office space, etc. from the city as long as fair market value is being paid.

Thomas J. Garland,  
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